

1 The Honorable Ronald B. Leighton
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MARK SUPANICH, a single man individually
11 and as guardian for S.S., a minor child,

12 Plaintiff,

13 v.

14 KEVIN RUNDLE and JANE DOE RUNDLE,
15 and their marital community; SANDY
16 PEDIGO, a single woman; KATHRYN
17 NELSON and JOHN DOE NELSON, and their
18 marital community; JULIA KAY and JOHN
19 DOE KAY, and their marital community;
20 DOES 1-100, unknown individuals,

21 Defendants.

22 NO. C10-5008 RBL

23 MOTION FOR RELIEF FROM FRCP
24 26(d) REGARDING TIMING AND
25 SEQUENCE OF DISCOVERY

Note on Motion Calendar:
April 14, 2010

17 COMES NOW defendants Julia and John Doe Kay (Kay), by and through their
18 attorneys, Williams, Kastner & Gibbs, PLLC, and Timothy L. Ashcraft, and move this court
19 for relief from the delay of discovery as set forth in Federal Rule of Civil Procedure 26(d).
20 This motion is based on the pleadings and papers on file herein and the Declaration of Timothy
21 L. Ashcraft.

22 **FACTUAL BACKGROUND**

23 This is a lawsuit alleging claims under 42 USC §1983 as well as state law claims
24 relating to a custody dispute between plaintiff Mark Supanich and defendant Sandra Pedigo
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MOTION FOR RELIEF FROM FRCP 26(d) REGARDING TIMING
AND SEQUENCE OF DISCOVERY - 1
(C10-5008 RBL)

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1 regarding their daughter, plaintiff S.S. Defendant Julia Kay is a social worker who provided
2 services to plaintiff S.S. According to the Complaint, the allegation against defendant Kay is
3 that she provided information to a representative from Montana Child Protective Services and
4 plaintiff alleges that S.S. was returned to the mother primarily based on the representations
5 made by defendant Julia Kay. (See Complaint at Paragraph 33).

6 The custody dispute(s) between plaintiff Supanich and Pedigo was litigated in Pierce
7 County Superior Court. Undersigned counsel has made a diligent search of the LINX system
8 (the electronic filing system for Pierce County Superior Court) and cannot locate this case(s)
9 on the electronic system, leading undersigned counsel to the belief that this case(s) has been
10 sealed or is otherwise confidential and therefore not viewable to an attorney who was not an
11 attorney of record to that case. (Declaration of Timothy L. Ashcraft at Paragraph 2.)

12 On information and belief, defendant Kevin Rundle, the attorney for Ms. Pedigo in the
13 underlying litigation, has all or most of the pleadings from this Pierce County Superior Court
14 case(s). (Declaration of Timothy L. Ashcraft at Paragraph 3). Because of this, defendants Kay
15 would like to send discovery requests to defendant Rundle, seeking any and all documents
16 (except attorney-client privileged documents) related to the underlying custody dispute(s) in
17 Pierce County Superior Court as well as any documents in his possession relating to the
18 criminal case in King County in which plaintiff Mark Supanich was charged with custodial
19 interference. According to the Minute Order regarding initial disclosures for this case, the
20 deadline for the FRCP 26(f) conference is June 14, 2010 which is two-and-one-half months
21 away. Additionally, defendant Pedigo has not yet appeared in this action, and based on other
22 orders in the court file, it appears that plaintiff seeks to amend his complaint to add even more
23 defendants.

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MOTION FOR RELIEF FROM FRCP 26(d) REGARDING TIMING
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ARGUMENT

A. Defendant Kay is entitled to the limited request for relief from FRCP 26(d).

According to Federal Rule of Civil Procedure 26(d), “a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under 26(a)(1)(b) or when authorized by these rules, by stipulation or by court order.” As noted above, it is still two-and-one-half months from the deadline for having the Rule 26(f) discovery conference and some named parties have not yet appeared in the action. Additionally, as noted above, additional parties may be added. Defendant Kay strongly believes that all claims against her are meritless and should be dismissed. To that end, defendant Kay is planning to bring a motion to dismiss or summary judgment motion as soon as possible. However, as part of the preparation of such a motion, defendant Kay needs access to the court file regarding the underlying Pierce County Superior Court custody dispute(s). On information and belief, the easiest way to obtain such information is directly from Ms. Pedigo’s former attorney in the underlying dispute, Kevin Rundle. Mr. Rundle is represented by counsel, Mr. Lance Hester.

This request for relief from FRCP 26(d) is limited to obtaining all non-privileged documents in the possession of Mr. Rundle or his attorney related to any underlying Pierce County Superior Court litigation and any documents they have regarding the related King County Superior Court criminal action against plaintiff Supanich. In the immediate requests, Defendant Kay will not ask any interrogatories of defendant Rundle and will seek documents only from Mr. Rundle and his attorney.

In a situation in which the underlying court file was public record and available to a licensed attorney, such request would not need to be made. However, it is because of the confidential nature of the underlying litigation and its inability to be accessed by an attorney

**MOTION FOR RELIEF FROM FRCP 26(d) REGARDING TIMING
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1 who was not an attorney of record in that litigation, that this request is necessary. No party will
2 suffer any prejudice from this request as these documents are clearly discoverable in this action
3 and defendant Kay only seeks to obtain them sooner than is otherwise permissible under the
4 Federal Rules of Civil Procedure. Moreover, defense counsel Ashcraft has conferred with
5 Lance Hester, counsel for Mr. Rundle, regarding this request and Mr. Hester has indicated that
6 he has no objection to providing the documents upon receipt of a discovery request. Defendant
7 Kay will pay for any copying costs associated with this request for production of documents.
8 Additionally, defendant Kay is not opposed to a reasonable protective order that limits the
9 disclosure of the document to litigation purposes only.

10 **CONCLUSION**

11 The circumstances of this case justify relief from FRCP 26(d) regarding the timing of
12 discovery. For the reasons stated herein, defendant Kay requests that she be allowed to send
13 the discovery request outlined above to Defendant Rundle as soon as the court will allow.

14 DATED this 5th day of April, 2010.
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16 s/Timothy L. Ashcraft, WSBA #26196
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18 Doe Kay
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lance M. Hester Lance@hesterlawgroup.com
kathic@hesterlawgroup.com
leeann@hesterlwgroup.com

Daniel R. Hamilton dhamilt@co.pierce.wa.us

And I sent a copy to the following via U.S. Express Mail on April 2, 2010 for delivery on or before April 5, 2010:

Mark Supanich
P.O. Box 932
Vaughn, WA 98394

s/ Karen Becker
Legal Assistant
kbecker@williamskastner.com

**MOTION FOR RELIEF FROM FRCP 26(d) REGARDING TIMING
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